

The Honorable Vu Khoan
Minister
Ministry of Trade
Hanoi, Vietnam

Dear Minister Khoan:

I have the honor to confirm receipt of your letter dated July 13, 2000, regarding investment licensing, which reads as follows:

“I have the honor to refer to the Agreement between the Socialist Republic of Vietnam and the United States of America on Trade Relations, signed on July 13, 2000. In this regard, I confirm the agreement between the Parties on investment licensing regimes as follows:

1. Vietnam may maintain the evaluation regime for investment licensing in the following sectors:
 - (a) Broadcasting and television; production, publishing and distribution of cultural products; construction and operation of sea port, river port, airport, cultural complex and tourist resorts; cargo and passenger transportation by road, air, rail, sea, inland-waterway; fishing and fish catching; banking; insurance; construction, installation and maintenance of telecommunication facility; brokerage, dealership in securities and currency values, and other related services; real estates business; infrastructure development projects for industrial parks, export processing zones and high tech zones;
 - (b) Projects in power, mineral exploitation and processing, metallurgy, cement, chemicals, agriculture sector with investment capital of over USD \$40 million. Vietnam shall consider raising this threshold amount as these sectors develop; and
 - (c) Projects using rice-growing land, urban land of 5 ha upward or other kinds of land of 50 ha upward, whether or not listed in this Paragraph.
2. Vietnam shall implement a registration regime for investment licensing, in place of the regime identified in paragraph 1, in the following sectors:
 - (a) within 2 years of entry into force of this Agreement, apply a registration

regime for investment licensing in respect of projects investing in industrial zones and export-processing zones; projects with export rate of at least 50% of products; projects having investment capital of up to USD 5 million.

- (b) within 6 years of the entry into force of this Agreement, apply a registration regime for investment licensing in respect of projects in manufacturing with investment capital of up to USD 20 million.
 - (c) within 9 years of the entry into force of this Agreement, apply a registration regime for investment licensing in respect to other projects, except those provided for in paragraph 1.
3. In cases in which nationals or companies of the United States apply for an investment license ("license") for a covered investment, including in the sectors set forth in paragraph 1, the following provisions shall be applied:
- (a) Nationals and companies of the United States shall be accorded most-favored nation treatment in respect of any requirements for, and in the administration of, licenses.
 - (b) The criteria for the granting or denial of a license, and for the imposition of any conditions for such license, shall be published, readily understandable, and no more burdensome than necessary to serve a legitimate regulatory interest.
 - (c) The decision to grant or deny a license shall be made in conformity with all of the provisions of this Agreement, including those relating to the maintenance and elimination of TRIMs and the provisions of Annex H and this letter.
 - (d) A decision denying an investment license to nationals or companies of the United States shall be in writing and set forth the reason for the denial. A national or company of the United States, if denied a license, shall have the right to seek reconsideration of such decision with the investment licensing agencies of Vietnam which shall issue a decision within thirty (30) days.
 - (e) Except as otherwise provided in paragraph 1(a) of this letter, a license shall not be denied or subjected to conditions for the purpose of (a) compelling a national or company of the United States to select a particular local partner or to locate production or other facilities in a particular location; or (b) discouraging or prohibiting investment in any particular sector.
2. Within 6 years of the entry into force of the Agreement, the licensing requirements and procedures for investment in the sectors not set forth in paragraph 1 and which are not yet subject to the

registration regime, shall:

- (a) be applied on the basis of treatment no less favorable than that accorded to nationals and companies of Vietnam; and
 - (b) in any case be consistent with the provisions of the paragraph 3.
5. The registration regime for investment licensing in the sectors set forth in paragraph 2 shall be provided for as follows:
- (b) The registration procedure shall require only the provision of basic information concerning the investor and proposed investment.
 - (c) Such registration shall be promptly approved and issued without the attachment of any conditions except as otherwise provided in Annex H and this letter.
 - (c) The national or company of the United States shall, except as otherwise provided in Annex H and this letter, be allowed to choose its local partner (if any), the location of its investment, the form of investment, the apportionment of their investment and to decide all matters relating to the operation of such investment, consistent with generally applicable Vietnamese laws and regulations.
 - (d) In no case shall the registration regime be applied on a basis less favorable than that accorded to nationals and companies of Vietnam or of any third country.
6. The above provisions shall not preclude Vietnam from:
- (a) prescribing special formalities which require a covered investment to be legally constituted and operated in compliance with the Vietnamese laws and regulations, provided that such formalities shall not impair the substance of any of the rights set forth in this Agreement, Annex H or this letter; or
 - (b) maintaining requirements on a covered investment in accordance with Annex H, this letter, and Article 11 of Chapter IV on TRIMs.

I have the honor to confirm that this letter shall form an integral part of the Agreement.”

I have the honor to confirm this agreement between the Parties regarding investment licensing, and that the letter and this reply shall form an integral part of the Agreement.

Sincerely,

Charlene Barshefsky